

# MEMORANDUM

DEPARTMENT OF PUBLIC WORKS  
County of Placer

TO: BOARD OF SUPERVISORS DATE: August 20, 2013

FROM: KEN GREHM / PETER KRAATZ

SUBJECT: **NELSON LANE BRIDGE REPLACEMENT PROJECT, AUTHORIZATION FOR THE CITY OF LINCOLN TO OBTAIN PROPERTY BY EMINENT DOMAIN**

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## ACTION REQUESTED / RECOMMENDATION

1. Adopt a Resolution authorizing the City of Lincoln to obtain right of way within the County of Placer on APN 021-380-020-000 by means of eminent domain with no net County cost.

## BACKGROUND / SUMMARY

Your Board approved a cooperative agreement on December 6, 2011 which allowed the City and County to work together cooperatively to replace the existing, narrow bridge on Nelson Lane between the State Route 65 Lincoln Bypass and Nicolaus Road in an unincorporated area of Placer County and within the City's sphere of influence. The City has taken the lead in delivering this federal Highway Bridge Program (HBP) project which will enhance travel from the new Lincoln Bypass to residents and businesses within the both the City and County.

In order to construct the project, the City needs to acquire right of way from eight different parcels. Sales agreements have been reached with four property owners, a Possession and Use agreement has been signed by one property owner, and the City is concluding negotiations with two others. However, one parcel of land, known as APN 021-380-020-000, has no known living owner, so acquisition by eminent domain is required.

This parcel is located on the western side of Nelson Lane, approximately 2,640 feet south of Nicolaus Road, and consists of 487 square feet or 0.1 acres and rural land, without any improvements. The City seeks to obtain a fee or easement interest in this Property. On June 18, 2009, the State of California recorded a Final Order of Condemnation for a different portion of this same parcel, related to its work on the State Route 65 Bypass project. The City Council adopted a resolution of necessity authorizing the initiation of eminent domain on July 23, 2013 (Attachment A). The City requested the County grant them authority to obtain right of way and easement on this parcel by means of eminent domain (Attachment B).

## ENVIRONMENTAL

This action is categorically exempt from the provisions of CEQA Section 15061(b)(3), no potential to cause significant environmental impact.

## FISCAL IMPACT

There is no fiscal impact anticipated to result from this action. This resolution does not obligate the County to contribute any additional funding to the project. The County has contributed \$36,000 toward the design of this project.

Attachment: Resolution  
Location Map  
Attachment A – Lincoln City Council Staff Memorandum for Resolution of Necessity  
Attachment B - City of Lincoln's request for authorization from the County

**Before the Board of Supervisors  
County of Placer, State of California**

In the matter of: A RESOLUTION AUTHORIZING  
THE CITY OF LINCOLN TO OBTAIN RIGHT OF WAY  
WITHIN THE COUNTY OF PLACER ON APN 021-380-  
020-000 BY MEANS OF EMINENT DOMAIN.

Resol. No:.....

The following RESOLUTION was duly passed by the Board of Supervisors  
of the County of Placer at a regular meeting held \_\_\_\_\_,  
by the following vote on roll call:

Ayes:

Noes:

Absent:

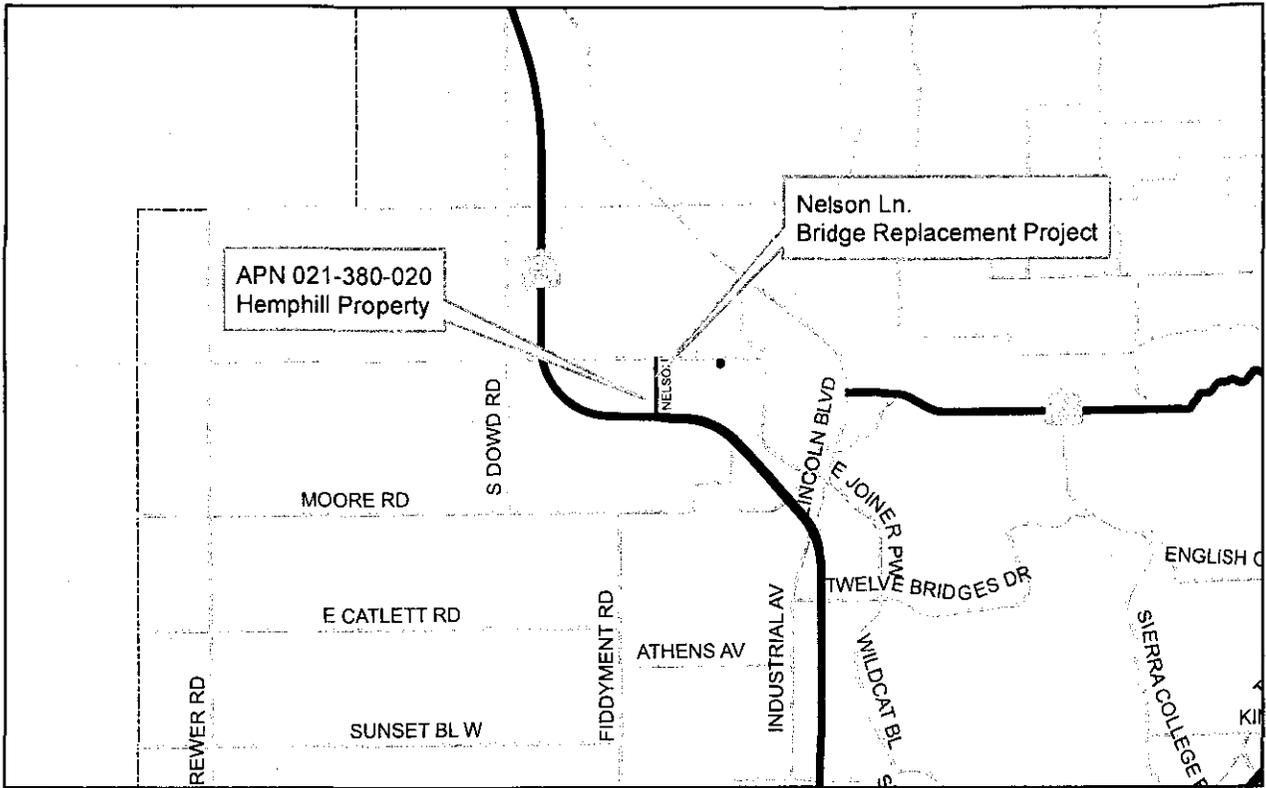
Signed and approved by me after its passage.

Attest:  
Clerk of said Board

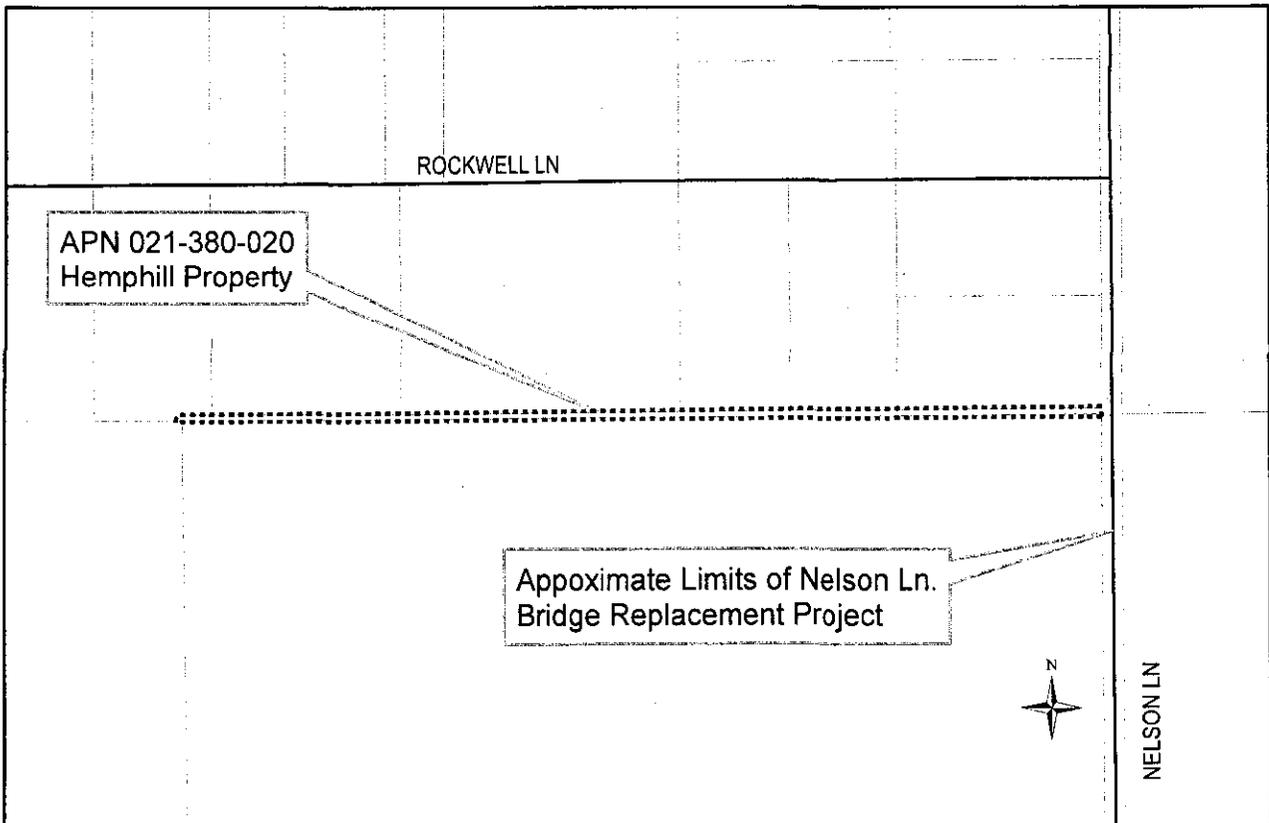
\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
\_\_\_\_\_  
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of  
Placer, State of California, that this Board authorizes the the City of Lincoln to obtain  
right of way within the County of Placer on APN 021-380-020-000 by means of eminent  
domain.

# Location Map



# Vicinity Map



**Attachment A**

**Lincoln City Council Staff Memorandum for resolution of  
necessity**



**MEMORANDUM**

**TO:** City Council

**FROM:** Jim Estep, City Manager

**PREPARED BY:** Ray Leftwich, P.E., Construction Manager

**REVIEWED BY:** Mark Miller, Public Services Director

**DATE:** July 23, 2013

**ITEMS:** Adopt a resolution declaring the necessity for and authorizing the initiation of eminent domain proceedings to acquire property, known as APN 021-380-020-000, required for the Nelson Lane Widening Project

**RESOLUTION:** Yes

**ORDINANCE:** N/A

**RECOMMENDATIONS:**

Staff recommends the City Council hold a Public Hearing to receive comments from any interested parties on the Notice of Intent to Adopt a Resolution of Necessity to Acquire Certain Real Property by Eminent Domain, and adopt a Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain.

**BACKGROUND:**

The existing Nelson Lane Bridge, located 0.25 miles south of Nicolaus Road at Markham Ravine, is functionally obsolete. Constructed in 1940, the bridge is too narrow, has no shoulders and the roadway approaches lie in a low sag, which allows roadway overtopping during major storm events. With the recent opening of the SR 65 Bypass, Nelson Lane has become a regionally significant route to the Lincoln Regional Airport, which lies just north of the project past Nicolaus Road. There has been a significant increase in traffic volumes on Nelson Lane. The southern limit of Nelson Lane ties into a recently constructed at-grade intersection in conjunction with the SR 65 Bypass. Existing conditions on Nelson Lane include a narrow 2-lane road without shoulders or a defined crown (un-engineered roadway) and a narrower bridge over Markham Ravine – so narrow that the center line stripe is omitted within 100 feet of each side of the bridge and across the bridge.

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Nelson Lane is currently functioning as a rural arterial. With anticipated City annexation and future developments in the area, this road will function as an urban arterial as designated in the Lincoln General Plan.

The existing bridge deficiencies and increased volume of traffic have increased the urgency to replace this bridge and widen Nelson Lane. The proposed Nelson Lane Bridge Replacement and Roadway Widening Project ("Nelson Roadway Project") will include two (2), two lane bridges that will accommodate two northbound, and two southbound lanes. The future southbound lanes will be constructed approximately along the alignment of the existing roadway. However, there will need to be acquisition of right of way along the western boundary of the roadway in order to accommodate shared NEV/Bike lanes, drainage improvements, changes to the roadway elevation, and to conform properly to the intersections of Nelson Lane with Nicolaus Road and the State Route 65 Bypass. Substantial acquisition of right of way is needed for the future northbound lanes.

The Nelson Roadway Project is of critical urgency. Since the opening of the State Route 65 Bypass on October 4, 2012, the Average Daily Trips (ADT) by vehicles on Nelson Lane has increased from 1,200 to 12,000, which changed the functional characteristics of Nelson Lane from a rural road to an arterial roadway. However, the geometry of the roadway is still consistent with that of a minor rural road. Roadway widening improvements are necessary to provide for the greatly increased traffic demands. Project prioritization was formally obtained from Caltrans on January 22, 2012 and authorization to proceed with early right of way acquisition was obtained from Caltrans on January 9, 2013.

**ANALYSIS:**

In order to construct the Nelson Roadway Project, the City needs to acquire right of way from eight different parcels. Sales agreements have been reached with four property owners, a Possession and Use agreement has been signed by one property owner, and the City is concluding negotiations with two others. However, one parcel of land, known as APN 021-380-020-000, has no known living owner, so acquisition by eminent domain is required.

The parcel that requires acquisition by eminent domain is located on the western side of Nelson Lane, approximately 2,640 feet south of Nicolaus Road, and has the APN of 021-380-020-000 ("Hemphill Property") (See Attachment A). The Hemphill Property consists of 487 square feet or 0.1 acres and rural land, without any improvements. The City seeks to obtain a fee or easement interest in this Property.)

The Hemphill Property was purchased by Alexander Hemphill from N. J. Nelson and Helen Nelson on June 19, 1905 (See Attachment B). Mr. Hemphill and his wife, Eliza, had one child, Wallace, who had a wife, Viva. Wallace and Viva Hemphill had no children, and passed away in 1933 and 1934 respectively.

The Hemphill Property is located entirely within the City's sphere of influence and within the County of Placer. On December 6, 2011, the City entered into a cooperative agreement with the County of Placer such that the City agreed to take

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the lead on the Nelson Roadway Project. Thus, the City has authority to acquire the Hemphill Property by eminent domain.

On June 18, 2009, the State of California recorded a Final Order of Condemnation (See Attachment C) for a different portion of this same parcel, related to its work on the State Route 65 Bypass project.

On July 3, 2013 a Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain (See Attachment D) was posted on the Hemphill Property by attaching it to a utility pole. The Notice of Intent was not mailed, because there is no address on file for the last known record owner of the Hemphill Property.

A Litigation Guarantee was obtained through Chicago Title Company (See Attachment E). This Guarantee confirmed that the Hemphill Property has no known living owner. Therefore, there is no property owner for the project right of way acquisition consultant, Bender Rosenthal, Inc., to negotiate with. The only option for obtaining this right of way is by means of eminent domain.

To secure the easement right-of-ways necessary to construct the project, staff requests that the City Council consider the adoption of a Resolution of Necessity (See Attached) authorizing the commencement of eminent domain proceedings for the Hemphill Property.

**THE PROPOSED RESOLUTION OF NECESSITY:**

Council adoption of a Resolution of Necessity, by four-fifths vote, with the following findings, based on the evidence contained herein and attached hereto, is required to initiate the proposed eminent domain action to acquire the Hemphill Property:

**1. The public interest and necessity require the proposed project.**

The 2050 General Plan for the City of Lincoln that was approved by City Council in March 2008, identifies the section of Nelson Lane between Nicolaus Road and State Route 65 Bypass as a six lane arterial roadway at full buildout of the General Plan. A four lane arterial roadway is warranted to accommodate current traffic, and additional traffic that is anticipated to occur within the next ten years. The final two lanes of traffic will be added at such a time as traffic demands warrant.

**2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.**

With the opening of the SR 65 Bypass, Nelson Lane immediately became a primary travel route for businesses and residents in the northwest part of Lincoln. Use of Nelson Lane is anticipated to increase as the Lincoln Aircenter commercial area continues to develop, and also with development of Special Use Districts A and B, and Villages 4 and 5 of the General Plan. Alignment of Nelson Lane was designed to minimize impact to the occupied properties on the west side of the roadway. The majority of right of way acquisition is occurring on the vacant properties on the east side of Nelson Lane.



**3. The property described in the Resolution of Necessity is necessary for the proposed project.**

The future southbound lanes of Nelson Lane are designed substantially along the existing alignment of Nelson Lane. However, changes to the roadway elevation and additional roadway features, such as NEV/Bike lanes and drainage features, necessitate a small amount of roadway expansion on the west side of Nelson Lane.

**4. The offer required by Government Code Section 7267.2 has not been made as there is no known living owner of record for the Hemphill Property.**

**OPTIONS:** The City Council may take the following actions:

1. Allow for a Public Hearing to receive comments from any interested parties on the Notice of Intent to Adopt a Resolution of Necessity to Acquire Certain Real Property by Eminent Domain, and adopt a Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain.
2. Provide staff with additional direction

**ENVIRONMENTAL REVIEW:**

**On March 12, 2013, the City Council adopted Resolution No 2013-041 to adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan for the Nelson Lane Bridge Replacement and Roadway Widening Project in compliance with the California Environmental Quality Act. A Categorical Exclusion was issued by California Department of Transportation on June 10, 2013 in compliance with the National Environmental Policy Act. No further environmental reviews are required.**

**FISCAL IMPACT:**

The Nelson Roadway Project is funded by FHWA Highway Bridge Replacement Project – Fund 298, State and Local Partnership Grant – Fund 250, Public Facilities Element (Streets) Fund 240, and a recommended budget appropriation from Gas Tax Fund 221.

The following table identifies the project budget as identified in the recently adopted Capital Improvements Budget for FY 2013/14.

**Prior Years Budget**

Preliminary Engineering – 298 Fund	\$1,026,948
Preliminary Engineering – 240 Fund	\$79,141
Preliminary Engineering – 221 Roads Fund	\$53,911
Right of Way Acquisition – 221 Fund	\$237,839
Total Prior Years Budget	\$1,350,000

**FY 13/14 Budget**

Construction Engineering – 298 Fund	\$1,025,243
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Construction Engineering – 221 Fund	\$132,832
Construction – 298 Fund	\$6,194,222
Construction – 250 Fund	\$600,000
Construction – 221 Fund	\$1,402,528

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Total FY 14/15 Budget \$9,354,825

**Total Project Budget \$10,705,125**

**STRATEGIC PLAN ACTION ITEM:** N/A

**RELATED ACTION:** None

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RESOLUTION NO. 2013-162

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINCOLN  
DECLARING THE NECESSITY FOR AND AUTHORIZING  
THE INITIATION OF EMINENT DOMAIN PROCEEDINGS  
TO ACQUIRE PROPERTY REQUIRED FOR  
THE NELSON LANE WIDENING PROJECT  
[CODE CIV. PROC. §§ 1245.220, 1245.230]**

**Property Owner: Alexander Hemphill**

**A Portion of APN: 021-380-020-000**

WHEREAS, the City of Lincoln ("City") is a public agency of the State of California and is authorized to exercise the power of eminent domain; and

WHEREAS, the California Constitution and Code of Civil Procedure §§ 1230.010 *et seq.* authorize the City to acquire property interests for public purposes by eminent domain procedures; and

WHEREAS, the City proposes a project to construct the Nelson Lane Widening Project that will replace the existing narrow two lane roadway with a four lane roadway that includes modern lane widths, shoulders and median (the "Project"); and

WHEREAS, in order to complete the Project, it is necessary for the City to acquire a permanent right of way easement and a temporary construction easement in real property identified as a portion of APN 021-380-020-000; and

WHEREAS, the permanent right of way easement and a temporary construction easement ("Property") are described in Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Property is located entirely within the City of Lincoln's sphere of influence and within the County of Placer; and

WHEREAS, on or about December 6, 2011, the City entered into a cooperative agreement with the County of Placer such that the City agreed to take the lead on the Nelson Lane Bridge replacement Project; and

WHEREAS, to the extent that the Property is already appropriated to a public use, the use of the Property for Project purposes constitutes a more necessary public use pursuant to Code of Civil Procedure § 1240.610, *et seq.*

WHEREAS, the City has investigated and examined the alternatives to the Project and the acquisition of the Property, and concluded that both the Project and the acquisition of the Property for the Project are necessary; and

WHEREAS, the City has complied with the requirements of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in regards to the acquisition of the Property; and

WHEREAS, the City has complied with requirements of the Government Code section 7267.2, in regards to acquisition of the Property by making an offer to purchase to the known owner(s) of record, or was unable to make an offer because the owner(s) could not be located with reasonable diligence; and

WHEREAS, the City finds and determines that notice of its intention to adopt this resolution of necessity was duly given as required by Code of Civil Procedure § 1245.235 by posted notice at the Property, as notice was not sent out by mail because no address appeared on the last equalized county assessment roll notice;

WHEREAS, as a result of this hearing as noticed in accordance with the provisions of Code of Civil Procedure, Section 1245.235, the City Council of the City of Lincoln intends to make certain findings and determinations.

NOW, THEREFORE, based on the evidence presented,

BE IT FOUND, DETERMINED AND RESOLVED BY A VOTE OF FOUR-FIFTHS OR MORE OF THE MEMBERS OF THE CITY COUNCIL FOR THE CITY OF LINCOLN, AS FOLLOWS:

(1) The permanent and temporary easements described in Exhibit "A" and depicted on Exhibit "B" are required to be taken by the City for the Project which constitutes a public use.

(2) The City is authorized to acquire these easements pursuant to the provisions of the Eminent Domain Law of the California Constitution and Code of Civil Procedure §§ 1230.010 *et seq.*

(3) Based upon the evidence presented, the City Council of the City of Lincoln hereby finds, determines, declares and resolves each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; and
- (c) The easements described in Exhibits "A" and depicted on Exhibit "B" are necessary for the proposed Project.
- (d) An offer in accordance with Government Code § 7267.2 has not been made because the owner(s) could not be located with reasonable diligence.

- (e) All conditions and statutory requirement necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed to deposit the probable amount of compensation, based on an appraisal, with the California State Treasurer's Office.

BE IT FURTHER RESOLVED, that the law firm of Kronick, Moskovitz, Tiedemann & Girard, a Professional Corporation ("KMTG"), is hereby authorized and directed to prepare, commence and prosecute proceedings in eminent domain in the appropriate court to acquire for the City the Property described in Exhibits "A" and depicted on Exhibit "B". KMTG is hereby further authorized and directed to obtain orders for immediate possession of the Property as may be required for the proposed Project.

PASSED AND ADOPTED this 23<sup>rd</sup> day of July, 2013

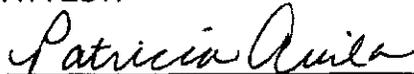
AYES: COUNCILMEMBERS: Gilbert, Joiner, Short, Nader

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Hydrick

  
\_\_\_\_\_  
Stan Nader, Mayor

ATTEST:

  
\_\_\_\_\_  
Patricia Avila, City Clerk

# Exhibit A

## LEGAL DESCRIPTION

BEING A PORTION OF THAT REAL PROPERTY AS DESCRIBED IN DEED "VOL 1506 PAGE 535", ON FILE IN THE PLACER COUNTY RECORDERS OFFICE, SITUATED IN THE UNINCORPORATED COUNTY OF PLACER, STATE OF CALIFORNIA, ALL IN THE NORTHEAST ONE-QUARTER OF SECTION 18, TOWNSHIP 12 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE EAST ONE-QUARTER CORNER OF SECTION 18, MARKED BY A 2" IRON PIPE, FROM WHICH THE NORTHEAST ONE-QUARTER OF SAID SECTION 18, MARKED BY A 2" BRASS DISC, BEARS NORTH 00° 22'52" WEST, A DISTANCE OF 2657.52 FEET AND FORMS THE BASIS OF BEARINGS FOR THIS DESCRIPTION, THENCE, LEAVING SAID EAST SECTION LINE, WESTERLY ALONG THE CENTER SECTION LINE OF SAID SECTION 18, ALSO BEING THE SOUTH LINE OF SAID DEED, SOUTH 89°35' 15" WEST A DISTANCE OF 29.77 FEET;

THENCE, LEAVING SAID CENTER OF SECTION LINE AND SOUTH DEED LINE, NORTH 01°34'48" EAST, A DISTANCE OF 16.51 FEET, TO A POINT ON THE NORTH LINE OF SAID DEED;

THENCE, EASTERLY ALONG SAID DEED LINE NORTH 89°35'15" EAST, A DISTANCE OF 29.21 FEET, TO A POINT OF INTERSECTION WITH SAID EAST LINE OF SECTION 18,

THENCE, SOUTHERLY ALONG SAID EAST LINE OF SECTION 18, SOUTH 0°22'52" EAST, A DISTANCE OF 16.50 FEET, TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

CONTAINING 487 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

SUBJECT TO: ALL COVENANTS, RIGHTS OF WAY AND EASEMENTS OF RECORD

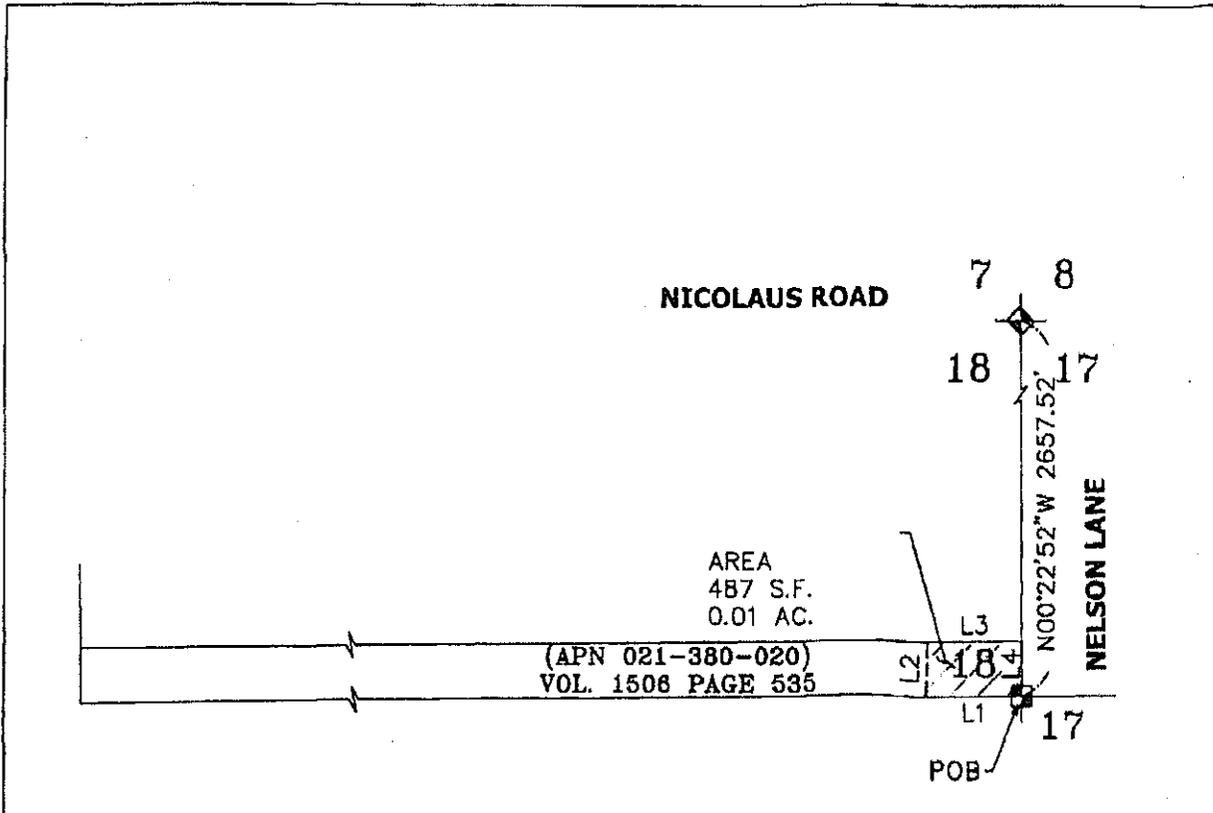
021-380-020

  
*Christopher D. Johnson*  
Christopher D. Johnson, P.L.S. 7576  
License Expires 12/31/11

END OF DESCRIPTION

*6/17/13*  
Date

# Exhibit A



### ABBREVIATIONS

POB POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°35'15"W	29.77
L2	N01°34'48"E	16.51
L3	N89°35'15"E	29.21
L4	S00°22'52"E	16.50



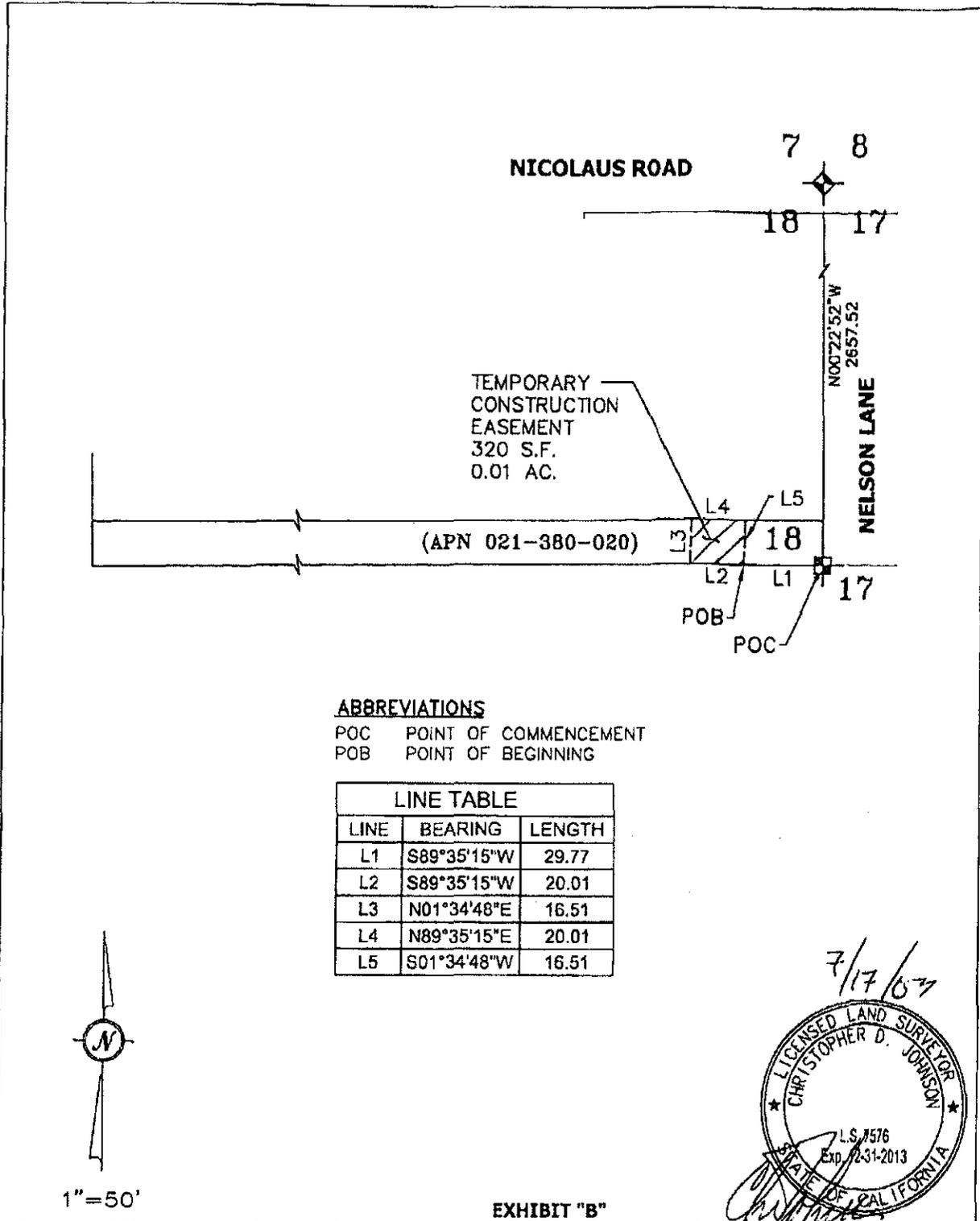
1"=50'



### EXHIBIT "B"

<p>FRAYJI DESIGN GROUP, INC. 2735 Douglas Blvd. Ste. 520 (916) 742-1300 Ph: 46 Riverside, CA 92501 (916) 742-1455 F: 46 CIVIL ENGINEERING • PLANNING • SURVEYING</p>	Plat to Accompany Description	Date: 6/17/13
	EXHIBIT	Job: 1600C
	Nelson Lane	By: GM
	City of Lincoln County of Placer California	Page 1 Of 1

# Exhibit B



**ABBREVIATIONS**

POC POINT OF COMMENCEMENT  
 POB POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°35'15"W	29.77
L2	S89°35'15"W	20.01
L3	N01°34'48"E	16.51
L4	N89°35'15"E	20.01
L5	S01°34'48"W	16.51



1" = 50'

**EXHIBIT "B"**

<p>FRAYJI DESIGN GROUP, INC. 2335 Douglas Blvd Ste 220 (916) 782-5000 Phone Roseville, CA 95661 (916) 782-3955 Fax CIVIL ENGINEERING • PLANNING • SURVEYING</p>	Plat to Accompany Description <b>TEMPORARY CONSTRUCTION EASEMENT</b> Nelson Lane City of Lincoln County of Placer California		Date: 2/06/13
			Job: 16000
			By: GW
			Page 1 Of 1

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# Exhibit B

## TEMPORARY CONSTRUCTION EASEMENT (TCE) LEGAL DESCRIPTION

BEING A PORTION OF THAT REAL PROPERTY AS DESCRIBED IN DEED "VOL 1506 PAGE 535", ON FILE IN THE PLACER COUNTY RECORDERS OFFICE, SITUATED IN THE UNINCORPORATED COUNTY OF PLACER, STATE OF CALIFORNIA, ALL IN THE NORTHEAST ONE-QUARTER OF SECTION 18, TOWNSHIP 12 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SECTION 18, MARKED BY A 2" IRON PIPE, FROM WHICH THE NORTHEAST ONE-QUARTER OF SAID SECTION 18, MARKED BY A 2" BRASS DISC, BEARS NORTH 00° 22'52" WEST, A DISTANCE OF 2657.52 FEET AND FORMS THE BASIS OF BEARINGS FOR THIS DESCRIPTION, THENCE, LEAVING SAID EAST SECTION LINE, WESTERLY ALONG THE CENTER SECTION LINE OF SAID SECTION 18, ALSO BEING THE SOUTH LINE OF SAID DEED, SOUTH 89°35' 15" WEST A DISTANCE OF 29.77 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, CONTINUING WESTERLY ALONG THE CENTER SECTION LINE OF SAID SECTION 18, ALSO BEING THE SOUTH LINE OF SAID DEED, SOUTH 89°35' 15" WEST A DISTANCE OF 20.01 FEET;

THENCE, LEAVING SAID CENTER OF SECTION LINE AND SOUTH DEED LINE, NORTH 01°34'48" EAST, A DISTANCE OF 16.51 FEET, TO A POINT ON THE NORTH LINE OF SAID DEED;

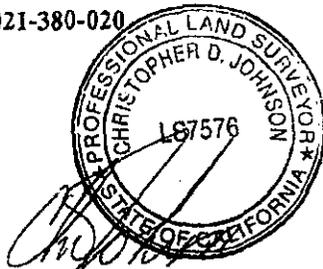
THENCE, EASTERLY ALONG SAID NORTH DEED LINE NORTH 89°35'15" EAST, A DISTANCE OF 20.01 FEET;

THENCE, LEAVING SAID NORTHERLY DEED LINE, SOUTH 0°22'52" EAST, A DISTANCE OF 16.51 FEET, TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

CONTAINING 320 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

SUBJECT TO: ALL COVENANTS, RIGHTS OF WAY AND EASEMENTS OF RECORD

021-380-020



Christopher D. Johnson, P.L.S. 7576  
License Expires 12/31/13

END OF DESCRIPTION

7/17/07  
Date



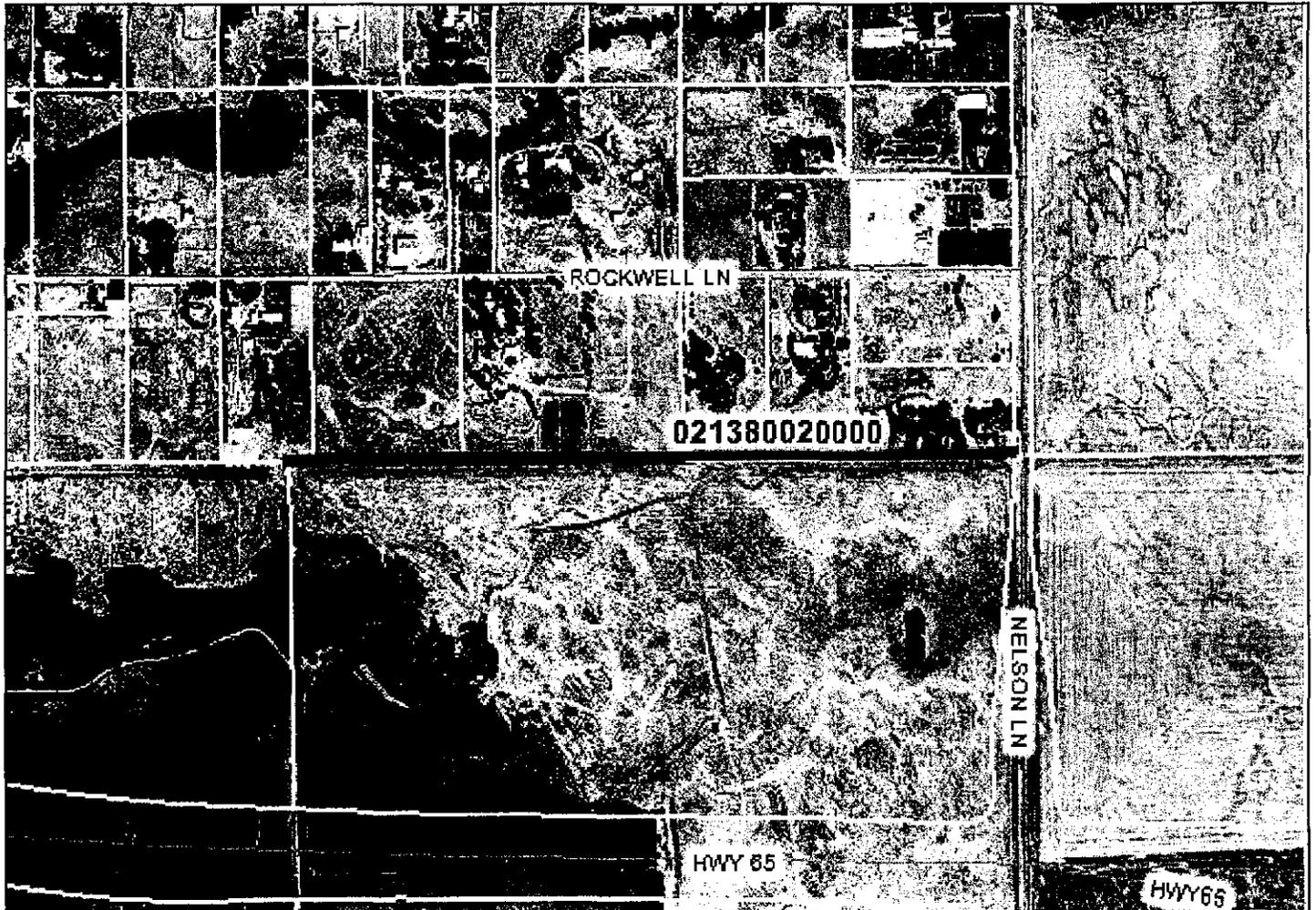
Attachment A

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# PLACER COUNTY, CALIFORNIA

## Hemphill Parcel

<b>APN</b>	021-380-020-000
<b>Address</b>	NO ADDRESS ON FILE , LINCOLN
<b>Approx. Acres</b>	0.95951576
<b>Zoning</b>	F-B-X 5 AC. MIN.
<b>Zoning</b>	F-B-X-SP 5 AC. MIN.
<b>Zoning</b>	F-B-X 5 AC. MIN.
<b>Community Plan Area</b>	Placer County General Plan
<b>General Plan</b>	Rural Residential 1 - 10 Ac. Min.
<b>Sphere of Influence</b>	LINCOLN
<b>Airport Overflight</b>	LINCOLN OVERFLIGHT ZONE
<b>Supervisor District</b>	BOARD OF SUPERVISORS DIST 2
<b>Fire District</b>	WESTERN PLACER FIRE PROTECTION DISTRICT
<b>School District</b>	WESTERN PLACER UNIFIED SCHOOL DISTRICT



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**Legend**



Selected Property



Streets

Parcels

Lakes



Placer County

City Limits

Counties

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Attachment B

This Indenture, Made the seventeenth day of June A.D. 1905 in the year of our Lord

one thousand eight hundred and ninety BETWEEN N. J. Nelson and Helen Nelson his wife both of the County of Placer State of California

the part of the first part, and Alexander Heenrichsen of the Town of Lincoln, County of Placer State of California the part of the second part

Witnesseth That the said parties of the first part, for and in consideration of the sum of

Thirty (30) DOLLARS, gold coin

of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged,

have granted, bargain, sold, remised, released and forever quit-claimed, and by these presents do grant, bargain, sell, remise, release and

forever quit-claim, unto the said party of the second part, and to his heirs and assigns all that certain lot

piece or parcel of land, situate, lying and being in the County

of Placer State of California well bounded and particularly described

as follows to wit: A strip of land one rod wide and one hundred

and fifty-two rods long, containing one and two one hundred and

sixtieths of acres of land beginning at the southeast corner

of the northeast quarter of Section Eighteen (18) in Township

Twelve (12) north range six (6) east T.M.D. B. & M. running

thence north one rod thence west one hundred and fifty-two

(162) rods thence south one rod thence east one hundred and

sixty-two (162) rods to the place of beginning

TOGETHER with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing spurs, rock and earth therein, and all the rights, privileges and franchises therein incident, appurtenant and appurtenant, or therein usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of

N. J. Nelson  
Helen Nelson

STATE OF CALIFORNIA.

COUNTY OF Placer

ON THE 17th day of June in the year 1905

thousand eight hundred and ninety before me, A. C. Fleming a Notary Public in and for

said County, residing therein, duly commissioned and sworn, personally appeared

N. J. Nelson and Helen Nelson his wife

known to me to be the persons described in, whose names are subscribed to and who executed the within and annexed instrument, and

solely acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at my office in said

County of Placer the day and year in this certificate first above written.



A. C. Fleming Notary Public  
In and for the County of Placer, State of California

Filed for record at the request of A. C. Fleming June 19 1905  
minutes past 4 o'clock P. M.

Donald S. Parker



Attachment C

302



PLACER, County Recorder  
JIM MCCAULEY

DOC- 2009-0053212-00

Thursday, JUN 18, 2009 14:54:25

NOC \$0.00

Ttl Pd \$0.00

Rcpt # 0001935678

baJ/BJ/1-7

RECORDING REQUESTED BY:

Department of Transportation

North Region - Right of Way

P.O. Box 911

Marysville, CA 95901-0911

Document Entered  
On R/W Maps

By G. TEMPLETON

Attention: Poppea Darling

Date 10-6-09

\*FROM THIS POINT AND ABOVE IS FOR RECORDER

RECORD WITHOUT FEE UNDER SECTION 27383 GOVERNMENT CODE

FINAL ORDER OF CONDEMNATION

33380

303

APR 22 2009

1 RONALD BEALS, Chief Counsel  
2 THOMAS C. FELLEZ, Deputy Chief Counsel  
3 JOANN GEORGALLIS, Assistant Chief Counsel-  
DANIEL MUALLEM  
4 JOSEPH P. CARROLL, SBN: 202936  
Attorneys for Department of Transportation  
5 1120 N Street (MS 57), P.O. Box 1438  
Sacramento, CA 95812-1438  
6 Telephone: (916) 654-2630  
Facsimile: (916) 654-6128  
7 Attorneys for Plaintiff

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

APR 16 2009

EXECUTIVE OFFICER & CLERK  
By *[Signature]*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF PLACER

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA, acting by and through the  
Department of Transportation,

13 Plaintiff,

14 v.

15 ALEXANDER HEMPHILL; HEIRS AND  
16 DEVISES OF ALEXANDER HEMPHILL,  
DECEASED, AND ALL PERSONS  
17 CLAIMING BY, THROUGH, OR UNDER  
SAID DECEDENT; ALL PERSONS  
18 UNKNOWN CLAIMING AN INTEREST IN  
THE PROPERTY and DOE ONE through DOE  
19 TWENTY, inclusive,

20 Defendants.

NO. SCV 22759

Parcel 34937-1

FINAL ORDER OF CONDEMNATION

Case Filed: April 15, 2008

DEPT: 42

22 According to the Court's file for this action, Judgment in Condemnation and Judgment by  
23 Default was signed on March 27, 2009.

24 It appearing to the satisfaction of this court that plaintiff is entitled to an order of final  
25 condemnation pursuant to the judgment entered in this action;

**RECEIVED**  
K. Machado

304

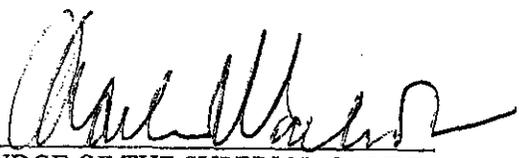
1 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
2 real property situated in the County of Placer, State of California, and more particularly described in  
3 Exhibit "A" attached hereto, be condemned to plaintiff for state highway purposes, in fee simple  
4 absolute or such lesser estate as therein described.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this order be  
6 recorded in the Office of the County Recorder of the County of Placer, State of California, and that  
7 title to said property described above shall vest in plaintiff and all interests of following defendants  
8 in and to said real property shall be terminated :

9 ALEXANDER HEMPHILL; HEIRS  
10 AND DEVISES OF ALEXANDER  
11 HEMPHILL, DECEASED, AND  
12 ALL PERSONS CLAIMING BY,  
13 THROUGH, OR UNDER SAID  
14 DECEDENT; ALL PERSONS  
15 UNKNOWN CLAIMING AN  
16 INTEREST IN THE PROPERTY

17 After said date are hereby canceled pursuant to sections 5081 et seq. of the Revenue and  
18 Taxation Code.

19 DATED: 4-16-09

20   
21 JUDGE OF THE SUPERIOR COURT

315

1 **PARCEL 034937-1:** An easement for public utility purposes and incidents thereto in  
2 and to that portion of the Northeast quarter of Section 18, T.12N., R.6E. MDM being  
3 more particularly described in the deed to Alexander Hemphill recorded on June 17,  
4 1905 in Book 71 at Page 515, Placer County Records, more particularly described as  
5 follows:

6 Beginning at a 3/4" iron pipe tagged LS 2323 marking the East quarter corner of Section  
7 18, T12N, R6E, as shown on that certain Record of Survey filed in Book 5 of Surveys,  
8 Page 59 Placer County Records said point being also on the centerline of Nelson Road;

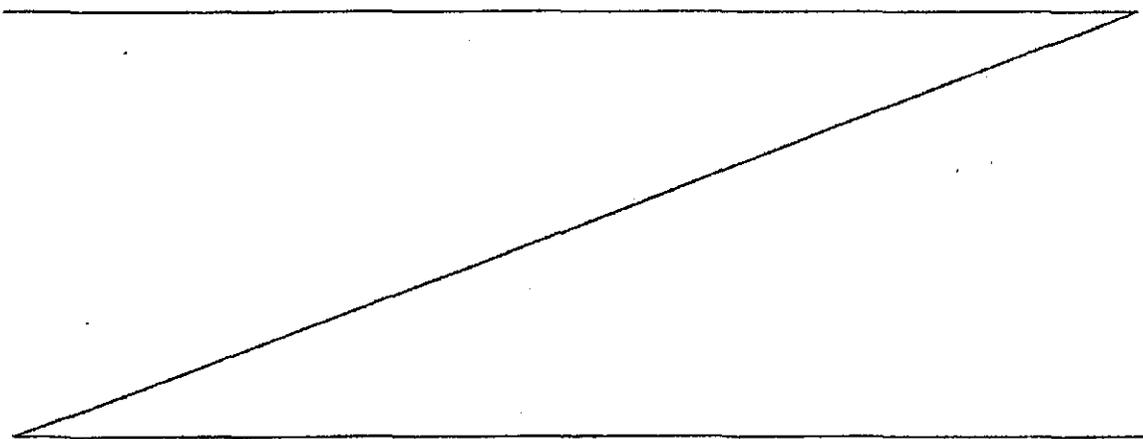
9 THENCE (1) South 89°35'23" West along the southerly line of the north half of said  
10 Section 18 a distance of 9.801 meters;

11 THENCE (2) North 12°33'19" East, 3.087 meters;

12 THENCE (3) South 84°38'33" East, 9.156 meters to the easterly line of said Section 18;

13 THENCE (4) South 0°23'33" East along said easterly line of said Section 18 a distance  
14 of 2.088 meters to the POINT OF BEGINNING;

15 The basis of bearings for this description is on the California Coordinate System of  
16 1983, Zone 2 (Epoch 1991.35). Distances shown are in meters unless otherwise noted;  
17 multiply distances by 1.0000822 to obtain ground level distances. Multiply distances  
18 shown in meters by 3937/1200 to obtain distances expressed in U.S. Survey Feet.

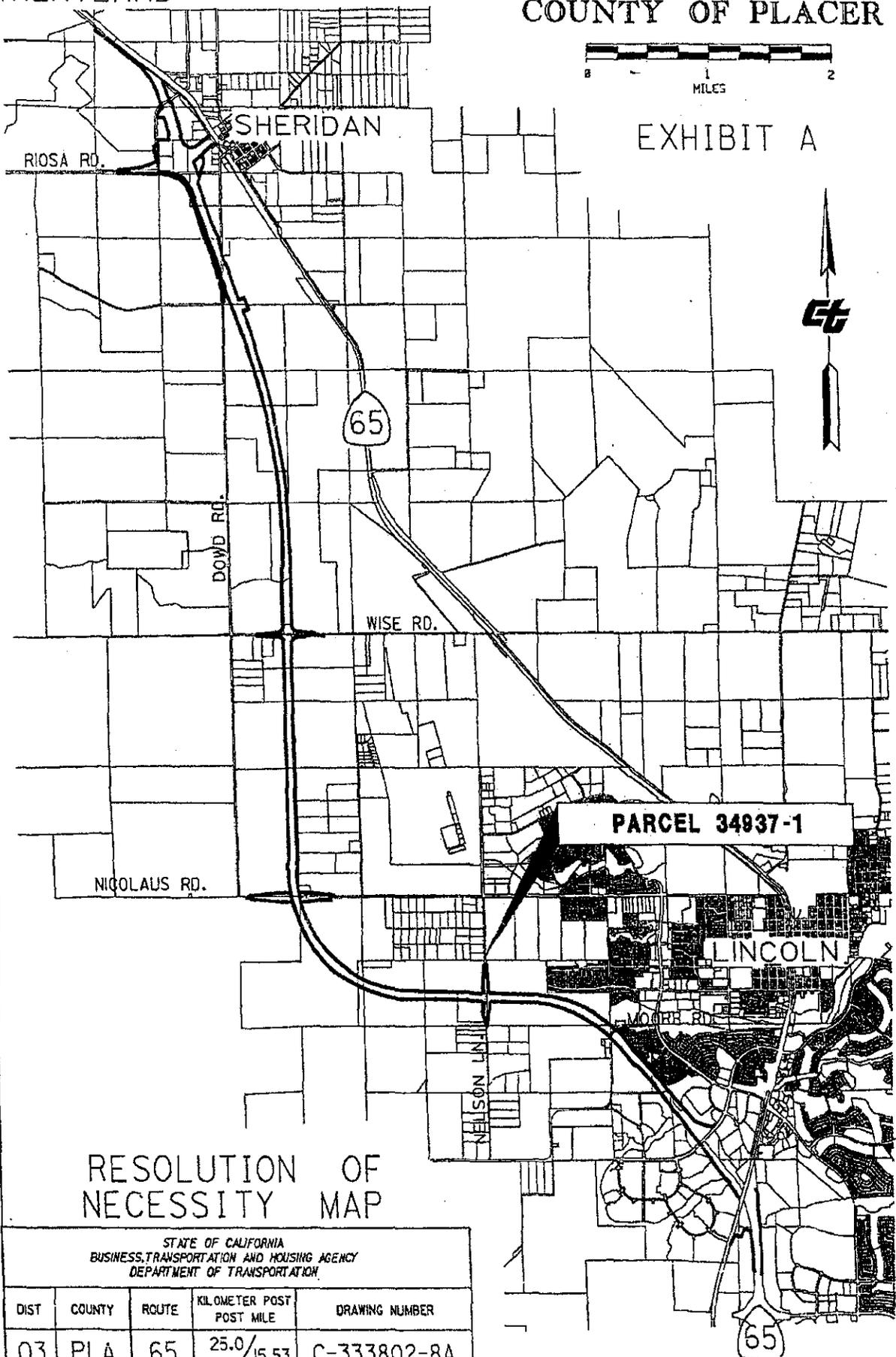


WHEATLAND

# COUNTY OF PLACER



## EXHIBIT A



### RESOLUTION OF NECESSITY MAP

STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION

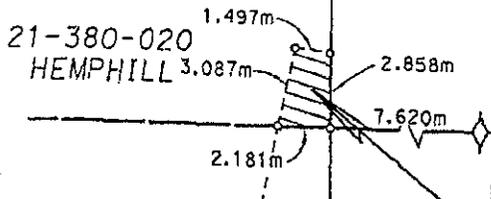
DIST	COUNTY	ROUTE	KILOMETER POST POST MILE	DRAWING NUMBER
03	PLA	65	25.0/15.53	C-333802-8A

COUNTY OF PLACER

T12N, R6E MDM

SECTION 18

EXHIBIT B



PARCEL 34937-1  
PGE EASEMENT

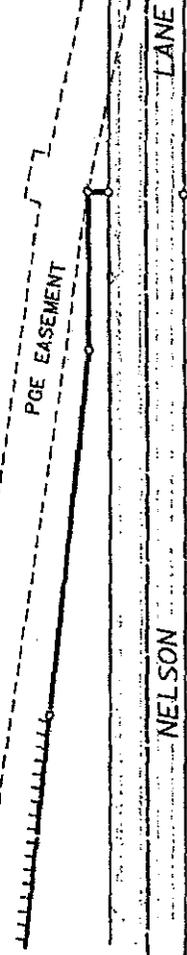
21-380-033  
HACKETT

21-262-001  
GILL PROPERTY DEV.

21-380-020  
HEMPHILL

21-261-004  
COLEMAN

21-262-004  
SCHEIBER



RESOLUTION OF  
NECESSITY MAP



DIST	COUNTY	ROUTE	KILOMETER POST POST MILE	DRAWING NUMBER
03	PLA	65	25.6/15.91	C-333802-2B

308



Attachment D

309



**NOTICE OF INTENT TO ADOPT RESOLUTION OF NECESSITY TO ACQUIRE  
CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY  
BY EMINENT DOMAIN  
(Code of Civil Procedure §1245.234)**

To: Alexander Hemphill  
No known address

(021-380-020-000)

California Code of Civil Procedure §1245.230 provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- (c) The property sought to be acquired is necessary for the project.
- (d) The offer required by Government Code §7267.2 has been made to the owner of record.

You are hereby notified that the City of Lincoln at its meeting to be held on July 23, 2013, at 65 McBean Park Drive, Lincoln, CA 95648, will meet to decide if the above conditions are met concerning your property and, if the conditions are met, to adopt a Resolution of Necessity.

**QUESTIONS REGARDING THE AMOUNT OF COMPENSATION TO BE PAID ARE NOT PART OF THIS PROCEEDING AND THE COUNCIL DOES NOT CONSIDER SUCH IN DETERMINING WHETHER A RESOLUTION SHOULD BE ADOPTED.**

City Hall  
600 Sixth Street  
Lincoln, CA 95648  
(916) 434-2400  
[www.ci.lincoln.ca.us](http://www.ci.lincoln.ca.us)

Administrative Services - City Manager's Office - Development Services  
Fire - Library - Recreation - Police - Public Services

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**RE: NOTICE OF INTENT TO ADOPT RESOLUTION OF NECESSITY TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN (Code of Civil Procedure §1245.234)**

Date: July 3, 2013

The adopted Resolution will authorize the City of Lincoln to acquire the property by eminent domain. A description of the required property is attached to this Notice and is marked "Exhibit A."

The proposed public use is widening of Nelson Lane between Nicolaus Road and State Route 65 Bypass to a four lane roadway with center median.

If you file a written request to appear (within 15 days from the posting of this Notice), you are entitled to appear and object to the adoption of the Resolution. Objections are limited to the four conditions listed above.

All requests to appear must be sent for filing to Patricia Avila, City Clerk, 600 Sixth Street, Lincoln, CA 95648.

Your written request must actually be on file within the 15-day period. Failure to file a written request results in a waiver of your rights to appear and be heard.

The written request to appear should include a statement of the condition(s) that you feel are pertinent to your property. The four conditions that may affect your property are set forth above, designated (a), (b), (c), and (d). By designating which condition forms the basis of your concerns, and why, you will enable City Council of the City of Lincoln to have a full and expeditious review made of the project's effect on your property.

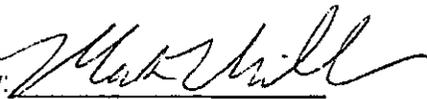
For your convenience, the City Council of the City of Lincoln will consider any written observations you may wish to submit, as long as such written observations are filed within the 15-day period.

The City of Lincoln must adopt a Resolution of Necessity before an eminent domain proceeding can be commenced. Within six months of the adoption of the Resolution of Necessity, the City of Lincoln will commence eminent domain proceedings in the Superior Court in the County where the property is located. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

If you have any questions, please call Ray Leftwich at (916) 434-2457.

Date: July 3, 2013

City of Lincoln

By: 

Name: Mark Miller

Its: Public Services Director

# Exhibit A

## LEGAL DESCRIPTION

BEING A PORTION OF THAT REAL PROPERTY AS DESCRIBED IN DEED "VOL 1506 PAGE 535", ON FILE IN THE PLACER COUNTY RECORDERS OFFICE, SITUATED IN THE UNINCORPORATED COUNTY OF PLACER, STATE OF CALIFORNIA, ALL IN THE NORTHEAST ONE-QUARTER OF SECTION 18, TOWNSHIP 12 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE EAST ONE-QUARTER CORNER OF SECTION 18, MARKED BY A 2" IRON PIPE, FROM WHICH THE NORTHEAST ONE-QUARTER OF SAID SECTION 18, MARKED BY A 2" BRASS DISC, BEARS NORTH 00° 22'52" WEST, A DISTANCE OF 2657.52 FEET AND FORMS THE BASIS OF BEARNINGS FOR THIS DESCRIPTION, THENCE, LEAVING SAID EAST SECTION LINE, WESTERLY ALONG THE CENTER SECTION LINE OF SAID SECTION 18, ALSO BEING THE SOUTH LINE OF SAID DEED, SOUTH 89°35' 15" WEST A DISTANCE OF 29.77 FEET;

THENCE, LEAVING SAID CENTER OF SECTION LINE AND SOUTH DEED LINE, NORTH 01 °34'48" EAST, A DISTANCE OF 16.51 FEET, TO A POINT ON THE NORTH LINE OF SAID DEED;

THENCE, EASTERLY ALONG SAID DEED LINE NORTH 89°35'15" EAST, A DISTANCE OF 29.21 FEET, TO A POINT OF INTERSECTION WITH SAID EAST LINE OF SECTION 18,

THENCE, SOUTHERLY ALONG SAID EAST LINE OF SECTION 18, SOUTH 0°22'52" EAST, A DISTANCE OF 16.50 FEET, TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

CONTAINING 487 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

SUBJECT TO: ALL COVENANTS, RIGHTS OF WAY AND EASEMENTS OF RECORD

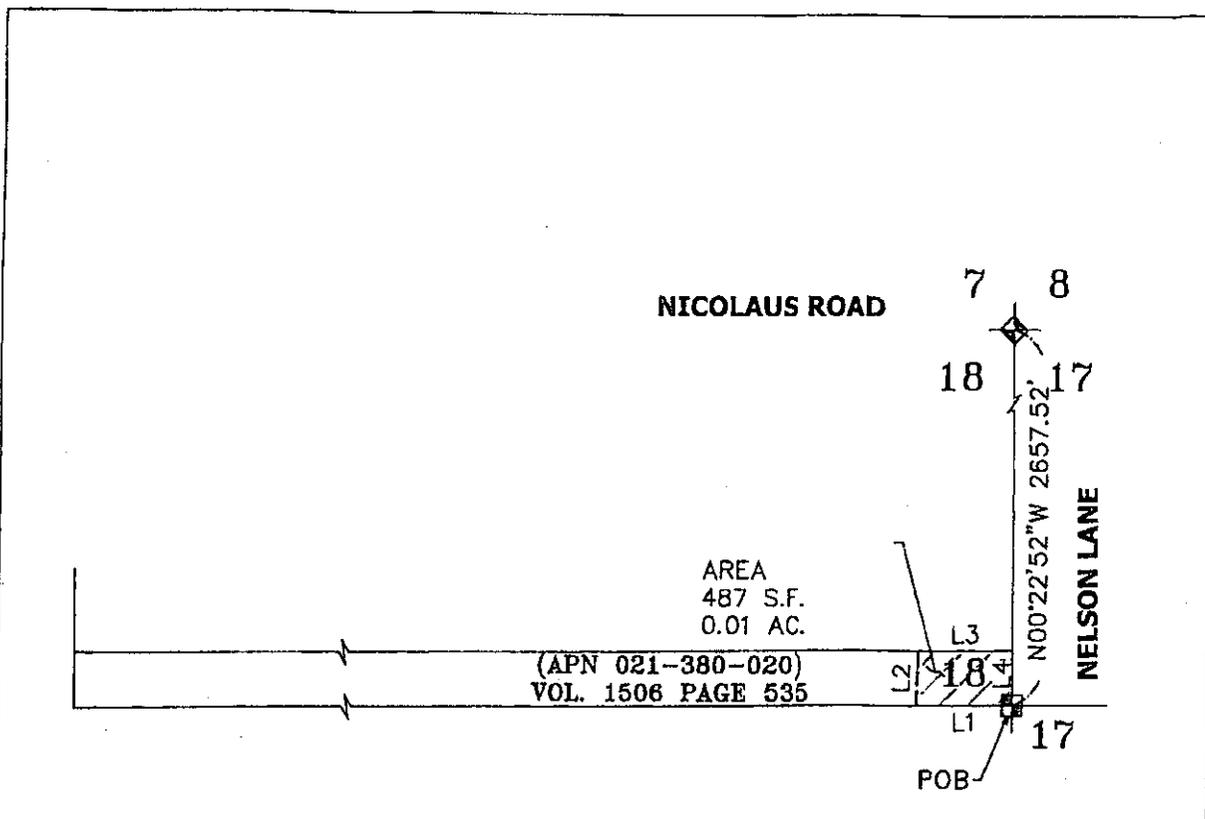
021-380-020

  
Christopher D. Johnson, P.L.S. 7576  
License Expires 12/31/11

END OF DESCRIPTION

6/17/13  
Date

# Exhibit A



### ABBREVIATIONS

POB POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°35'15"W	29.77
L2	N01°34'48"E	16.51
L3	N89°35'15"E	29.21
L4	S00°22'52"E	16.50



1"=50'



### EXHIBIT "B"

	Plat to Accompany Description	Date: 6/17/13
	EXHIBIT	Job: 16000
	Nelson Lane	By: GM
	City of Lincoln County of Placer California	Page 1 Of 1



Attachment E

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# Chicago Title Insurance Company

Guarantee No.: CACTI7758-7758-4761-0076105809-CTIC-2013-G1

## LITIGATION GUARANTEE

**SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE**

**Chicago Title Insurance Company**  
a corporation, herein called the Company

### GUARANTEES

the Assured named in Schedule A against loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, as of Date of Guarantee shown in Schedule A:

1. The title to the herein described estate or interest is vested in the vestee named in Schedule A.
2. Except for the matters shown in Schedule B, there are no defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, which matters are not necessarily shown in the order of their priority.
3.
  - a) the current interest holders claiming some right, title or interest by reason of the matters shown in Part II of Schedule B are as shown therein. The vestee named in Schedule A and parties claiming to have some right, title or interest by reason of the matters shown in Part II of Schedule B may be necessary parties defendant in an action, the nature of which is referred to in Schedule A.
  - b) the current interest holders claiming some right, title or interest by reason of the matters shown in Part I of Schedule B may also be necessary parties defendant in an action, the nature of which is referred to in Schedule A. However, no assurance is given hereby as to those current interest holders.
4. The return address for mailing after recording, if any, as shown on each and every document referred to in Part II of Schedule B by specific recording information, and as shown on the document(s) vesting title as shown in Schedule A are as shown in Schedule C.

**THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION REFERRED TO IN SCHEDULE A. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.**

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Guarantee to be signed and sealed by its duly authorized officers.

*Will Sayre*  
Countersigned

Chicago Title Insurance Company  
 BY *[Signature]* President  
 ATTEST *[Signature]* Secretary



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**SCHEDULE A**  
**LITIGATION GUARANTEE**

LIABILITY: \$0.00  
FEE: \$1,500.00

1. NAME OF ASSURED: Frayji Design Group, Inc.
2. DATE OF GUARANTEE: June 27, 2013, 07:30 A.M.
3. THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF AN ACTION TO
4. THE ESTATE OR INTEREST IN THE LAND WHICH IS COVERED BY THIS GUARANTEE IS:  
A Fee
5. TITLE TO THE ESTATE OR INTEREST IN THE LAND IS VESTED IN:  
**Alexander Hemphill**
6. THE LAND REFERRED TO IN THIS GUARANTEE IS DESCRIBED AS FOLLOWS:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF PLACER, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A strip of land one (1) rod wide and one hundred and sixty two (162) rods long, more particularly described as follows:

Beginning at the Southeast corner of the Northeast quarter of Section 18, Township 12 North, Range 6 East, M.D.B. & M., running thence North one (1) rod; thence West one hundred and sixty two (162) rods; thence South one (1) rod; thence East one hundred sixty two (162) rods to the place of beginning.

APN: 021-380-020-000

**SCHEDULE B**

Defects, liens, encumbrances or other matters affecting title:

Part I

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2013-2014.
2. **Prior to closing, Escrow must contact the PLACER County Tax Collector's Office (530-889-4120) to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.**
3. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
4. **Any rights, interest or claims** affecting said land which may exist or arise by reason of the any matter(s) that may be set forth and/or disclosed by a survey plat, filed August 21, 1974 in Book 5 of Surveys at Page 59.

**END OF PART I**

**SCHEDULE B**

Part II

**1. A pending Court Action** as disclosed by a recorded notice:

Plaintiff: The People of the State of California  
Defendant: Alexander Hemphill; Heirs and Devisees of Alexander Hemphill,  
deceased, and all persons claiming by, through or under said decedent  
County: Placer  
Court: Superior  
Case No.: SCV 22759  
Nature of  
Action: Title to and the right of possession of an easement for public utility  
purposes and incidents thereto  
Attorney: Bruce A. Behrens  
Address: 1120 N. Street, P.O. Box 1438  
Sacramento, California 95812  
Recorded: April 15, 2008, Instrument No. 2008-0030194-00, of Official Records

**END OF PART II**

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**SCHEDULE C**

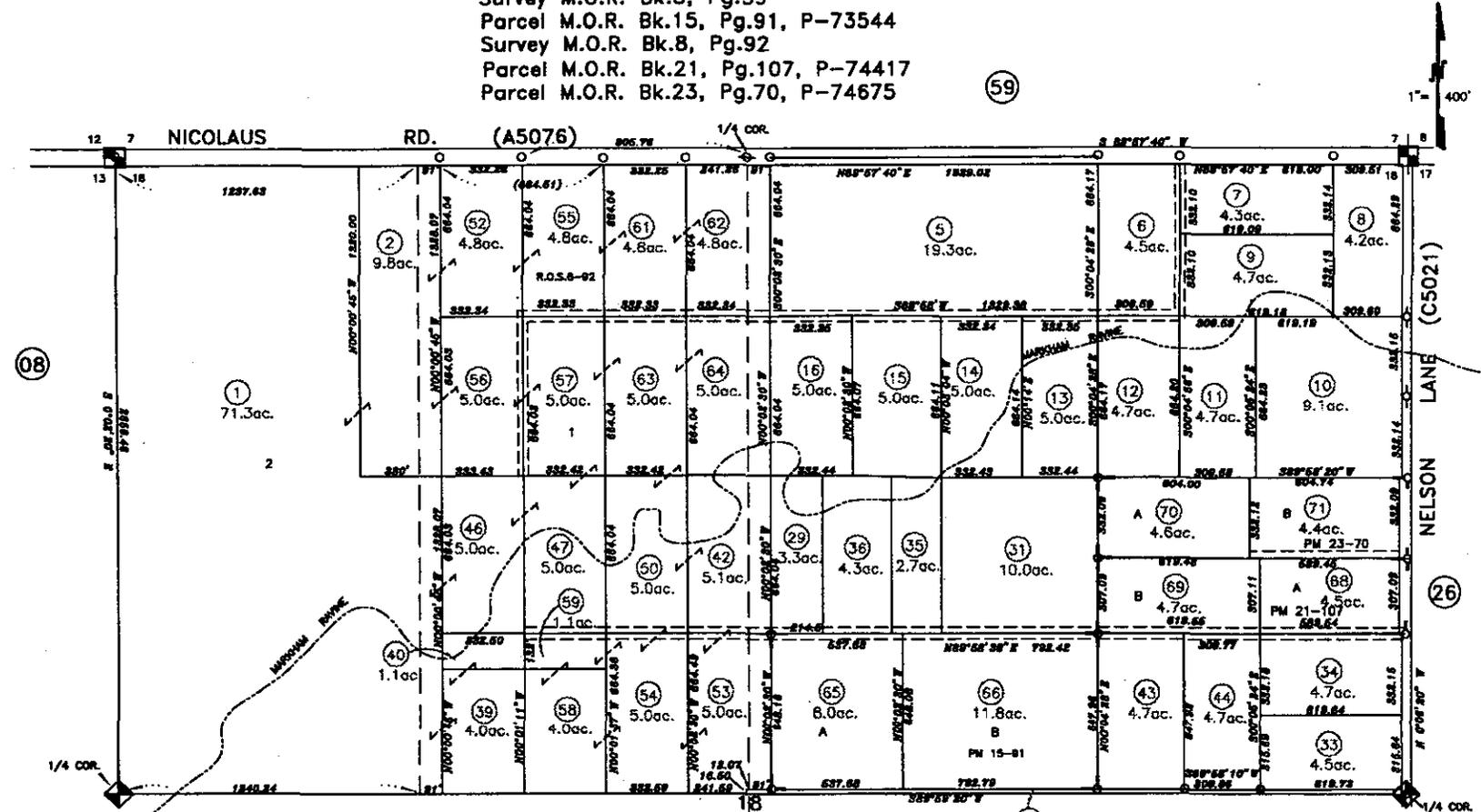
Addresses

- 1.** Paragraph Number: N/A  
Recorded:  
Name: Alexander Hemphill  
Address: None disclosed of record  
City, State Zip:
  
- 2.** Paragraph Number: 1, Schedule BII  
Recorded: April 15, 2008, Instrument No. 2008-0030194-00, of Official Records  
Name: Bruce A. Behrens, Chief Counsel  
Address: 1120 N Street  
City, State Zip: Sacramento California 95812

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N1/2 SEC.18, T.12N., R.6E., M.D.B.&M.

Survey M.O.R. Bk.5, Pg.59  
 Parcel M.O.R. Bk.15, Pg.91, P-73544  
 Survey M.O.R. Bk.8, Pg.92  
 Parcel M.O.R. Bk.21, Pg.107, P-74417  
 Parcel M.O.R. Bk.23, Pg.70, P-74675



04-08-98 PAGE REDRAWN ELECTRONICALLY BMJ

NOTE  
 This map was prepared for assessment purposes, only and is not intended to illustrate legal building sites or establish precedence over local ordinances. Official information concerning size or use of any parcel should be obtained from recorded documents and local governing agencies.

Assessor's Map Bk.21 Pg.38  
 County of Placer, Calif.

NOTE  
 Assessor's Block Numbers Shown in Ellipses.  
 Assessor's Parcel Numbers Shown in Circles.

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## SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
  - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
  - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
  - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
  - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
  - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
  - (c) The identity of any party shown or referred to in Schedule A.
  - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

## GUARANTEE CONDITIONS AND STIPULATIONS

### 1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A), (C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

### 2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### 4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such

Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

### 5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably

pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

### 6. Options to Pay or Otherwise Settle Claims; Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that

paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

**7. Determination and Extent of Liability.**

This Guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

**8. Limitation of Liability.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the

Assured in settling any claim or suit without the prior written consent of the Company.

**9. Reduction of Liability or Termination of Liability.**

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

**10. Payment of Loss.**

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

**11. Subrogation Upon Payment or Settlement.**

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

**12. Arbitration.**

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee,

any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**13. Liability Limited to This Guarantee; Guarantee Entire Contract.**

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**14. Notices, Where Sent.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at:

Chicago Title Insurance Company  
P.O. Box 45023  
Jacksonville, FL 32232-5023  
Attn: Claims Department

**Attachment B**

**City of Lincoln's request for authorization from the County**



July 30, 2013

Matt Randall, PE  
County of Placer DPW, Road & Bridge Engineering Division  
3091 County Center Drive, Suite 220  
Auburn, CA 95603

Subject: Request for Authorization to Obtain R/W by Eminent Domain  
Alexander Hemphill Property – APN 021-380-020-000  
Nelson Lane Bridge Replacement

Dear Mr. Randall:

As the lead agency for the Nelson Lane Widening Project, as agreed to in the Cooperative Agreement Between Placer County and the City of Lincoln Relating to the Nelson Lane Bridge Replacement Project, dated December 6, 2011, the City of Lincoln is pursuing acquisition of right of way and easements necessary for construction of the roadway project. There are a total of eight land owners from which the City must obtain right of way and easements. Agreements have been obtained from five land owners, and the City's right of way agent is in final negotiations with two others. However, there is one parcel that has no identifiable living owner that the City has no alternative for acquisition than by eminent domain.

The parcel in question, with APN 021-380-020-000, is situated on the western side of Nelson Lane, approximately 2,640 feet south of Nicolaus Road. The recorded owner of this parcel is Alexander Hemphill, who died approximately 100 years ago.

In order to continue with development of this much needed roadway improvement project, the City of Lincoln requests the County's authorization for the City to obtain right of way and easement on the subject parcel by means of eminent domain. Should you require additional information, please contact the City's Construction Manager, Ray Leftwich, P.E., at (916) 434-2457, or [rleftwich@ci.lincoln.ca.us](mailto:rleftwich@ci.lincoln.ca.us).

Sincerely,

Jim Estep  
City Manager

cc: Jon Hobbs, City Attorney  
Mark Miller, Public Services Director  
Ray Leftwich, P.E., Construction Manager  
Howard Michael, Quincy Engineering

City Hall  
600 Sixth Street  
Lincoln, CA 95648  
(916) 434-2400  
[www.ci.lincoln.ca.us](http://www.ci.lincoln.ca.us)

Administrative Services - City Manager's Office - Development Services  
Fire - Library - Recreation - Police - Public Services

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